BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, and John G. Hobbs, Complainants, V. Grain Belt Express LLC, and Invenergy Transmission LLC, and Invenergy Investment Company, Respondents	)	Case No. EC-2021-0034

INITIAL BRIEF OF COMPLAINANTS

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Pursuant to the Commission's Order of September 2, 2020, Complainants Missouri Landowners Alliance, et al. ("Complainants") respectfully submit this Initial Brief.

I. Introduction. During the course of the evidentiary hearings in Case No. EA-2016-0358 ("the CCN case"), in support of its effort to gain Commission approval for an electric transmission line in northern Missouri, Respondent Grain Belt Express ("Grain Belt") offered into evidence a standard form of an easement agreement to be used in negotiating easements on the right-of-way of the proposed line in Missouri.[1] Grain Belt assured the Commission that this particular document (the "original easement") would be the one presented to landowners in their negotiations for easements on the proposed right-of-way.[2]

The issue in this complaint case is whether Respondents have the right to unilaterally disregard the original easement submitted to the Commission, and instead substitute new easement forms (the "revised easements") which differ significantly from Grain Belt's original easement.[3]

II. Background. In the CCN case, Grain Belt sought and was given permission from the Commission to build the Missouri portion of an interstate transmission line, crossing eight counties in northern Missouri.[4]

Along with its initial Application in the CCN case, Grain Belt filed the testimony and accompanying Schedules from 15 different witnesses, one of whom was Ms. Deann Lanz, the vice president of Land for Grain Belt's ultimate owner.[5]

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[1] The Applicant in the CCN case was named Grain Belt Express Clean Line LLC. See Report and Order on Remand in the CCN case, issued March 20, 2019 ("the "CCN Order"), p. 5. On June 9, 2020, after completion of the CCN case, that entity's name was changed to Grain Belt Express LLC. See Grain Belt's Response to Formal Complaint in EC-2020-0408, p. 1, n1.

[2] See discussion in Section IV.3 below.

[3] After the final CCN Order was issued, the Commission approved the purchase of Grain Belt by Respondent Invenergy Transmission LLC ("Invenergy"). See Respondents' Motion to Dismiss Formal Complaint in EC-2020-0408, pp. 1-2.

[4] CCN Order, p. 9 par. 4-6.

One of the Schedules included with Ms. Lanz's testimony was a standard form for an easement agreement to be used by Grain Belt in easement negotiations with Missouri landowners. This "original easement" was marked as Schedule DKL-4 to Ms. Lanz's testimony, which eventually became Exhibit 113.[6]

As discussed below, in her direct testimony Ms. Lanz informed the Commission that the easement at DLK-4 would be the document which Grain Belt would present to landowners in their easement negotiations. However, subsequent to the issuance of the CCN decision, Invenergy discarded the original easement form for such negotiations. Instead, Invenergy and its land agents are now using two other easement forms which are significantly different from the original easement presented to the Commission in the CCN case.[7]

One of the revised easement forms being used by Respondents' land agents is shown at Exhibit 2 to the initial Complaint in this case ("first revised easement").[8] The other is shown at Exhibit 1 to the Joint Motion ("second revised easement").[9] As it pertains to this case, the two revised easements are essentially identical. Minor differences in paragraph numbering will be noted below as appropriate.

III. Changes made by Invenergy to the original easement. The parties have stipulated that the issue here is limited to whether Grain Belt is required by the CCN decision to initiate easement negotiations with landowners using Grain Belt's original easement agreement.[10]

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[5] See CCN case, EFIS 2-16; and testimony of Ms. Lanz, p. 1 at EFIS 6.
[6] See Exhibit 1113 at EFIS 372.
[7] Compare the original easement at Schedule DKL-4, supra, to the two revised easements, one at Exhibit 2 of the initial Complaint and the other at Exhibit 1 to the "Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule", filed September 1, 2020 (the "Joint Motion"). And see also the discussion below which addresses some of those differences.
[8] See Joint Motion, p. 3, par. 6(a).
[9] *Id.*
[10] Joint Motion, p. 3, Section II.6.(c).

However, two of Complainants' three arguments on the sole issue here are dependent upon the existence and nature of some of the changes which Respondents made to the original easement.[11] Accordingly, in presenting those two arguments Complainants must address certain of the changes to the original easement.

Respondents completely revamped the format of the original easement, making it quite difficult to identify all of the changes which they incorporated into the revised easements. However, among the changes which are relevant to the issue here are the following:

(1) Section 26 of the revised easements introduces an entirely new provision, titled "Waiver of Jury Trial". This section essentially provides that if there is any unresolved dispute regarding any provision of the easement agreement, the parties automatically forfeit their right to a jury trial for resolution of such disputes.

Thus under this new provision, if a landowner disagrees with the amount which Grain Belt is willing to pay for crop damages, or land damages, or damage to livestock, or any of the many other types of damages which may be incurred during or after construction of the line, the landowner will have forfeited his or her right to have that matter settled through a jury trial in the State of Missouri.

Respondents would also waive their right to a jury trial. However, if they did have a legal dispute with a landowner, it is a near-certainty that without this new provision any suit brought by Grain Belt against the landowner would be tried before a jury in the landowner's home county.[12] So clearly, this new provision was added for Respondents' own benefit.

This waiver of the right to a jury trial was not included in Grain Belt's original easement agreement. In fact, the original easement included the following provision:

[11] See the arguments at sections IV.1 and IV.2 below.
[12] See the venue provisions in Sections 508.010.2 and 508.010.4, RSMo.

> If Landowner and Grain Belt are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity in state and federal courts in the State of Missouri.[13]

(2) Section 21 of the revised easements includes another new concept, under the heading of "Severability." It essentially states that if any provision of the easement is found to be invalid, the remaining provisions of the document shall remain in full force and effect. This change is obviously designed to protect the Respondents from having all of their easements being declared void in their entirety. There was no similar language in the original easement.

(3) Section 23 of the revised easements attempts to protect the Respondents from legal defects in the easements which Respondents themselves drafted (or at least approved). It would force the landowner to join with Grain Belt in correcting such defects by either amending the easement or signing a new easement in a form reasonably requested by Grain Belt. Furthermore, the property owners (as well as Grain Belt) would be obligated to waive their rights under any law which would render any portion of the easement invalid, including any unknown "hereinafter enacted laws."

In contrast, under Section 10 of the original easement, the parties retained "all remedies available at law or in equity in state and federal courts in the State of Missouri."

(4) Section 2.e of the first revised easement and Section 2.d of the second revised easement are titled "Site Plan". This section could apparently have the landowner signing the easement as tendered without even knowing the type and number of support structures, if any, which would be installed on his or her property. The "approximate location" of the structures, as referred to in this new section, may or may not mean that those structures will eventually be built on any particular parcel of land. And without that information, the landowner cannot determine

[13] Section 10, pp. 3-4 of Schedule DKL-4.

what the total easement payment will amount to, and thus cannot logically decide whether or not the proposed easement is in their best interest.

Complainants are not aware of any provision in the original easement agreement which would have the landowner signing the document before even knowing the number and type of support structures which would ultimately be installed on the property.

(5) Section 8 of the revised easements, titled "Cooperation", seemingly gives Grain Belt the right to sign documents in the landowner's name, without the landowner even knowing the specific language in the document being signed.

The closest provision to this section in the original agreement was Section 12, but it included no mention of giving Grain Belt the authority to sign in the landowner's name.

(6) Section 22 of the revised easements is also new. It provides that the activities of both parties shall be controlled by the Missouri Landowner Protocol, Missouri Agricultural Impact Mitigation Protocol, and the Code of Conduct "as may be amended, supplemented or replaced from time to time…." Based on the quoted language, Grain Belt purports to give itself the unilateral right at any time to revise or replace any or all of those documents. And because those three documents were incorporated into the easement itself, any revisions to those documents would presumably constitute binding provisions of the easement. As stated at Section 22 of the revised easements, the documents "shall be controlling" on the activities of both Grain Belt and the landowners.

However, in its CCN order, the Commission directed Grain Belt to comply with the terms of the three documents in question, as they existed at the time. The Commission did not

authorize Grain Belt to make unilateral changes to those documents after the case was finalized.[14]

(7) Under Section 10 of the original easement agreement, Grain Belt was generally given 30 days to cure any monetary breach of the agreement before it could be terminated by the property owner. Under Section 12 of the revised agreements, that period has been extended to 60 days.

(8) In Exhibit C to the new agreement, Grain Belt grants itself a three year Easement Agreement Extension, as opposed to the two years specified in the original easement.[15]

(9) The Missouri Landowner Protocol, with which Grain Belt is required to comply, provides in part as follows:

> Grain Belt Express will pay landowners for any agricultural-related impacts ("Agricultural Impact Payments") resulting from the construction, maintenance or operation of the Project, regardless of when they occur and without any cap on the amount of such damages. For example, if the landowner experiences a loss in crop yields that is attributed to the operation of the Project, then Grain Belt Express will pay the value of such loss in yield for so long as such losses occur. In other words, the intent is that the landowner be made whole for any damages or losses that occur as a result of the Project for so long as the Project is in operation.[16]

This language clearly means, for example, that Grain Belt would be responsible for crop damages resulting from soil compaction anywhere on the property for as many years as those damages continue. The same would be true for crop losses resulting from damages to drainage systems.

[14] CCN Order, p. 52, par. 8.
[15] For the comparable provision in the original agreement see Exh. 11 in Case EM-2019-0150, EFIS 62; and Tr. Vol. 2 pp. 53-55, EFIS 44, of that same case.
[16] Par. 3.3, pp. 4-5 of Schedule DKL-1 to Exhibit 113 in the CCN case. EFIS 372. And see the CCN Order, p. 52, par. 8, where the Commission ordered Grain Belt to comply with the provisions of this document.

Compensation for crop damages is addressed in Section 3 of the revised easements, which is at best confusing. It first echoes the general principles quoted above from the Landowner Protocol. However, it goes on to state that the compensation as computed in Exhibit E to the revised easement "is in satisfaction of all loss in crop yields attributed to construction of the Facilities … throughout the Term of this Agreement and Grantor [the landowner] waives all additional claims for loss in crop yields associated with such construction …."

So one must look to Exhibit E to determine if it preserves all of the rights to compensation provided for in the Landowner Protocol. At best the answer is unclear. At worst, the revised easement can be read as eliminating a potentially significant portion of the compensation for crop damage required under the Landowner Protocol.

The primary purpose of Exhibit E is to calculate an amount of "advance crop compensation" for each type of crop within a 50 foot wide strip of the easement property. The Exhibit then provides as follows: "In the event that Grantor suffers crop damages during construction that are greater than the anticipated 50 feet used in this calculation, Grantor may notify Grantee [Grain Belt], and Grantee shall pay the additional compensation based on the formula described above."[17]

There are two problems with this provision, when read in conjunction with Section 3 of the revised easements. First, the quoted language from Exhibit E only provides for additional compensation for damages <u>beyond</u> the 50 foot strip used to calculate the "advance crop compensation." Therefore, the revised easement would not provide for any additional compensation for damages <u>within</u> the 50 foot strip which might not be immediately apparent – such as those resulting from soil compaction.

[17] This paragraph also addresses damages resulting from operations and maintenance of the line, but that point does not go to the damages resulting from the actual construction. That language is therefore irrelevant here.

Second, as to land outside the 50 foot easement strip, Exhibit E provides for additional compensation only for crop damages which occur "during construction." A plausible reading of this provision is that it does not cover crop damages which only become apparent after construction is completed, in that those damages were not incurred "during construction."

In contrast to the revised easement, Section 3 of the original easement was straight-forward: "Grain Belt will repair or pay … for any damages to Landowner's or Landowner's tenants' improvements, livestock and/or crops as a result of Grain Belt exercising its rights under this Agreement." And the "Easement Calculation Sheet" from the original easement included nothing remotely similar to the language in the new Exhibit E discussed above.[18]

(10) Section 6 of the original easement states that if the easement is terminated by Grain Belt, it must remove its facilities within 180 days of the termination. Under Section 11 of the revised agreements, Grain Belt would only be required to remove the facilities "as soon as practicable". Particularly if the termination was due to financial problems, "as soon as practicable" could be a matter of years – even with the decommissioning fund in place.

(11) Finally, Section 2.d of the first revised easement, and Section 2.c of the second revised easement, give Grain Belt the right to use the property in question "for installation, operation, and maintenance of fiber optic cable …." There is no similar provision in the original easement.

The problem with this new provision is that the CCN does not authorize the installation of fiber optic cable as part of the Grain Belt project.

[18] See Exhibit 11 from Case No. EM-2019-0150, wherein the Commission approved the sale of Grain Belt to Invenergy. EFIS 62.

The controlling provision in the CCN Order states that "Grain Belt Express Clean LLC's application for a certificate of convenience and necessity filed on August 30, 2016, is granted."[19] However, in describing the scope of the project for which the CCN was sought, that Application made no mention of fiber optic cable or anything else not directly related to the transmission of electrical energy.[20]

IV. Invenergy's decision to unilaterally discard the original easement in favor of its revised easements is in violation of the Commission's CCN decision for three separate and equally-valid reasons.

1. Violation of a condition in Exhibit 206. Section VII.7 of Exhibit 206 in the CCN case sets forth one of the conditions to the CCN agreed to by Grain Belt and Staff, compliance with which was made mandatory by the Commission.[21] That provision says that "Grain Belt's right-of-way acquisition policies and practices will not change regardless of whether Grain Belt does or does not yet possess a Certificate of Convenience or Necessity from the Commission."

Contrary to this mandate, the changes to the original easement described in Section III above clearly constitute changes to Grain Belt's right-of-way acquisition policies and practices.

The term "right-of-way acquisition policies and practices" is not defined in the CCN Order or in Exhibit 206. When terms of a statute or a contract are not defined, the courts will often rely upon the dictionary definition of those terms.[22]

[19] CCN Order, p. 51, par. 1.
[20] See Grain Belt's Application for a CCN, EFIS 34, at page 1, paragraph 1, and paragraphs 14, 17, 18 and 21.
[21] Exhibit 206 was included as Attachment A to the Commission's CCN Order. Compliance with each of the provisions of this Exhibit was made mandatory by the Commission at p. 51, par. 2 of the CCN Order.
[22] *Dickemann v. Costo Wholesale Corp.,* 550 S.W.3d 65, 68 (Mo. banc 2018) (stating that "Absent express definition, statutory language is given its plain and ordinary meaning as typically found in the dictionary.") (Internal quotation marks omitted); *Dibben v. Shelter Ins. Co.,* 261 S.W.3d 553, 557 (Mo. App. 2008) (applying that same concept to the interpretation of an insurance contract).

Borrowing from this judicial practice, according to Webster's New Twentieth Century Dictionary, unabridged, Second Edition, the most applicable definition of the term "policy", is "any governing principle, plan or course of action."

And the definition of the term "practice" includes "a frequent or usual action".

According to the on-line version of Merriam-Webster's dictionary,[23] the most applicable definition of "policy" is "a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions."

And the definition of the word "practice" includes "the usual way of doing something."

Based upon those definitions, as well as simple common sense, the changes adopted in the revised easements clearly constitute changes in Grain Belt's "right-of-way acquisition policies and practices". To wit:

- As described in Section III(1) above, in furtherance of Grain Belt's acquisition of right-of-way easements, the revised documents institute a new practice of requiring that the landowner forfeit his or her right to a jury trial regarding every dispute related to the easement.
- As described in Section III(3) above, the revised easement institutes a new practice of requiring the landowner to join with Grain Belt in correcting defects in the easement agreement itself.
- As described in Section III(4) above, under the revised easement agreements, the landowner would be signing without definitely knowing how many and what type of support structures would be constructed on his or her property. That was not the policy under the original agreement.

[23] www.merriam-webster.com

- As described in Section III(5) above, the revised agreements institute a new right-of-way acquisition policy by allowing Grain Belt to sign certain documents in the landowner's name, without the landowner even knowing the specific language in the document being signed.

- As described in Section III(6) above, the revised agreements would allow Grain Belt to amend, supplement or replace any provision in the Missouri Landowner Protocol, the Missouri Agricultural Impact Mitigation Protocol, and the Code of Conduct. Particularly in combination, those three documents constitute the very essence of Grain Belt's "right-of-way acquisition policies and practices".[24]

The Missouri Landowner Protocol specifically states, for example, that it "is a comprehensive policy of how Grain Belt Express interacts, communicates, and negotiates with affected landowners."[25] The Commission itself described the Protocol in those same terms.[26] It further found that the Protocol (or perhaps the accompanying Code of Conduct) established Grain Belt's "approach to landowner and easement agreement negotiations …."[27] Grain Belt had expressed those sentiments itself, stating that the Code of Conduct constitutes "the Company's approach to landowner and easement agreement negotiations…."[28]

Significantly, in describing why the proposed line was in the public interest, the Commission noted that any negative impacts of the Project on the land and landowners would be mitigated by the landowner protocol and other steps to be taken by Grain Belt.[29]

[24] A copy of the Missouri Landowner Protocol is shown at Schedule DKL-1 to the testimony of Ms. Lanz, EFIS 6. A copy of the Missouri Agricultural Impact Mitigation Protocol is shown at Schedule JLA-2 to the testimony of Grain Belt witness James Arndt, EFIS 11. And a copy of the Code of Conduct is shown at Schedule DKL-2 to the testimony of Ms. Lanz, EFIS 6.
[25] Schedule DKL-1, *supra*, p. 1, par. 1.
[26] CCN Order, p. 32-33, par. 109.
[27] CCN Order, p. 33 par. 109.
[28] *Id.*
[29] CCN Order, p. 46, last par.

Similarly, the Agricultural Impact Mitigation Protocol is said to describe the "standards and policies" to be used in construction of the line, while further committing (contrary to what the revised easements would permit) that the document "shall remain valid for the entire construction period of the Project."[30]

It is fair to say that the record discloses few if any right-of-way acquisition policies and practices which are not included in the three documents in question. Yet Respondents now claim they have the unilateral right to utilize easement agreements which give them the express authority to revise those documents, despite the fact that compliance with the documents was a mandatory condition to the CCN.

- An obvious example of a change in acquisition practices is summarized in Section III(9) above, which describes the changes to the clear and unequivocal obligation in the original easement "that the landowner be made whole for any damages or losses that occur as a result of the Project for so long as the Project is in operation."

The bottom line is that the above items constitute changes in Grain Belt's acquisition policies and practices; i.e., in their "course or method of action" when negotiating easements for the right-of-way. Accordingly, the revised easements constitute a violation of the mandatory provision in Section VII.7 of the agreement at Exhibit 206 which expressly prohibits such changes.

2. Violation of the Missouri Landowner Protocol. Section 2, page 4 of the Missouri Landowner Protocol specifically requires that "Grain Belt Express' approach to landowner negotiations will not change regardless of when these negotiations take place."[31] Compliance

[30] Schedule JLA-2, *supra*, p. 3.
[31] Schedule DKL-1 of Exh. 113, EFIS 372.

with this Protocol was made mandatory in the CCN Order.[32] In fact, the Commission directed Grain Belt to incorporate the terms and conditions of the Protocol into its easements with landowners.[33]

Complainants submit that making substantial revisions to the very document which is the starting point for easement negotiations is indeed a drastic change in Grain Belt's "approach to landowner negotiations." Accordingly, presenting the landowner with a revised version of the easement agreement in and of itself constitutes a clear and significant violation of the Commission's prohibition against any change in Grain Belt's approach to landowner negotiations.

That restriction was obviously included for a reason. But if the changes to the original easement do not constitute a violation of that directive, it is difficult to imagine what would.

For the foregoing reasons, one or more of the changes to the original easement constitute a change to "Grain Belt Express' approach to landowner negotiations." Accordingly, such revisions violate the Commission's prohibition against all such changes, as set forth in Section 2 page 4 of the Missouri Landowner Protocol.

3. <u>The unilateral changes to the document presented to the Commission in the CCN case constitutes a violation of the CCN Order.</u> As briefly referred to above, in her Direct Testimony in the CCN case, Ms. Deann Lanz, who was a Vice President of Grain Belt's ultimate owner, testified as follows:[34]

[32] CCN Order, p. 52, par. 8.
[33] *Id.*
[34] At that point, the ultimate owner of Grain Belt was Clean Line Energy Partners LLC. See CCN Order, p. 8, par. 1.

Q. Please describe what a typical easement agreement contains.

A. Grain Belt Express has a standard form of agreement, the Transmission Line Easement Agreement ("Easement Agreement") that it will present to landowners. It is attached as **Schedule DKL-4.** The Easement Agreement provides for the development, financing and safe construction and operation of the Project, and is broad enough to cover most situations and concerns raised by landowners, without making such Easement Agreement overly burdensome or lengthy.[35] (emphasis added).

Ms. Lanz went on to seemingly imply that Grain Belt would be willing to negotiate "reasonable modifications" to the standard easement in order to accommodate unique circumstances of an individual landowner.[36] The original easement, however, was expressly represented to the Commission as the document which Grain Belt "will present to landowners" when negotiating for an easement. Respondents have now chosen to ignore that commitment.

Further, in its brief to the Commission in the CCN case, Grain Belt touted its original easement as one of the documents which "provide a multitude of landowner protections, far more extensive than typically offered by Missouri utilities."[37] Having urged the Commission to issue the CCN in part on the basis of the original easement, it would certainly be inequitable to allow Grain Belt to dilute the very landowner protections it relied upon when urging the Commission to grant the CCN.

And notably, the Commission (not to mention the other parties) was not even afforded the opportunity to review the changes to the document which Grain Belt asserted in sworn testimony that "it will present to landowners."

The MLA and EMLA took Grain Belt at its word, and assumed in the CCN case that the original easement agreement was being offered by Grain Belt as the document it would present to landowners in negotiating easements on the right-of-way. And because Grain Belt's original

[35] Exhibit 113, p. 15. EFIS 372.
[36] Id.
[37] Grain Belt's Reply Brief on Remand, p. 24. EFIS 743.

easement was presented as part of the record in the CCN case, the parties had the opportunity during that case to challenge specific provisions of Grain Belt's proposed easement.[38]

However, at this point the parties to the CCN case have no apparent means of objecting to the changes in the revised easement, except through this complaint process. Therefore, given that the changes to the easement agreement were made by Invenergy after the conclusion of the CCN case, it is all the more imperative that the Commission considers the negative impact which the revised easements will have upon landowners.

The Commission was apparently under the same impression regarding the original easement as was the MLA and EMLA. Citing Ms. Lanz's Schedule DKL-4 and her accompanying testimony, in its final Order in the CCN case the Commission determined, under its "Findings of Fact", that "Grain Belt uses a standard form of agreement when acquiring easement rights from Missouri landowners."[39] Clearly, the Commission had been led to believe by Grain Belt that it would actually use that same standard easement form as the starting point for negotiations with landowners – not some variation which Invenergy decided to unilaterally implement after the close of the case.

The Commission also noted that the original easement "limits the landowner's legal rights and use of the easement property." But if Invenergy is allowed to subsequently modify that form on its own, then in hindsight the Commission was basing its decision on an easement which as a practical matter is now confined to Grain Belt's Recycle Bin.

Accordingly, based upon Grain Belt's sworn testimony, it is fair to assume that when the Commission granted Grain Belt the CCN, it did so with the understanding that the original easement agreement discussed in its Order would be used as the starting point for the actual

[38] See Initial Post-Hearing Brief on Remand of the MLA, et al., pp. 36-38 in the CCN case. EFIS 737.
[39] CCN Order, p. 12, par. 19; p. 8.

easement negotiations with landowners. If indeed that was the Commission's assumption, then it is also fair to assume that Grain Belt's continued use of that agreement was considered to be a requirement of the Commission's CCN Order. Respondents' failure to honor that commitment would thereby violate an implicit if not express provision in the Order granting the CCN.

The Commission is entitled to interpret its own orders, and to ascribe to them a proper meaning.[40] Accordingly, if the Commission logically assumed on the basis of Grain Belt's testimony and briefs that the easement presented to it during the course of the CCN case would be the one used in the negotiations with landowners, then it certainly has every right to decide that its Order was violated when Invenergy subsequently reneged.

Grain Belt's commitment to use the original easement was included in Ms. Lanz' pre-filed direct testimony. Thus that commitment was made deliberately, and with forethought. It was not made during some off-the-cuff remark during cross-examination.

And Ms. Lanz testified that the original easement is the document that Grain Belt <u>will</u> present to landowners. She did not testify that it would be presented to landowners unless Invenergy later realized that it would be more advantageous to use something else.

The Commission and the landowners have every right to hold Grain Belt and Invenergy to her word. There is no reason why the Commission should be deemed powerless to prevent what amounts to bait-and-switch tactics on a matter of such importance.

V. <u>Prayer for Relief.</u> For the foregoing reasons, Complainants respectfully request the following relief: (1) that the Commission find that pursuant to its Order in the CCN case, when negotiating an easement with Missouri landowners for the right-of-way of the proposed transmission line, if Respondents and their agents wish to present the landowners with a form of

[40] *State ex rel. Missouri Pacific Freight Transport Co. v. Public Serv. Comm'n,* 312 S.W.2d 363, 365 (Mo. App. 1958) (stated in the context of the Commission's authority to interpret conditions which it had included in a CCN); *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n,* 392 S.W.3d 24, 36 (Mo. App. 2012).

an easement agreement they must use the form shown at Schedule DKL-4, and may not use the revised easements or any other easement form which is significantly different from that shown at Schedule DKL-4; and (2) for whatever further relief the Commission deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by email upon counsel for all parties this 16th day of September, 2020.

__/s/ Paul A. Agathen___